

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

Tony Fountain #152157

2007 APR 30 A 9:37

Plaintiff,

VS.

CIVIL ACTION NO: 2:06-CV-548-
-MHT

DR. PEASANT, et al
Defendant.

MOTION TO VOID ORDER OF AUGUST 2nd 2006
FOR CLARIFY ENFORCEMENT OF THE ORDER OF
AUGUST 2 2006, AND FOR REIMBURSEMENT
OF PLAINTIFF'S FILING FEE OF AUGUST
5th 2006.

Comes now, Tony Fountain, by and through himself herein request this Court to void its ORDER OF Magistrate Judge Susan Russ Walker, of August 2 2006, requiring the Plaintiff to pay \$350.00 filing fee. And Show in support the following:

FACTS

On June 20, 2006, Plaintiff filed the above action in this Court concerning the Inadequate Medical Attention he received. On August 2nd 2006, the Magistrate Judge (Susan Russ Walker) granted the

Plaintiff in forma pauperis status and ordered him to pay said filing fee on or before August 10 2006 (see, Court Doc. #17-1, pages 1-3).

DISCUSSION

The Magistrate Judge order, Dated August 2 2006,
Granting Plaintiff In Forma Pauperis Status
IS VOID.

The Magistrate Judge (Susan Russ Walker) had no authority to issue a dispositive order GRANTING OR DENYING in FORMA PAUPERIS STATUS. SEE Tripathi v. Rison, 847 F.2d. 548 (CA9, 1988); Prows v. Kastner 842 F.2d. 138 (8th Cir. 1988). Pursuant to 28 U.S.C. Section 636(b)(2), Plaintiff section 1983 Complaint was referred to Magistrate Judge Susan Russ Walker by District Court Judge Myron H. Thompson for a Report and Recommendation. Plaintiff contends the District Court Judge referred did not authorize the Magistrate Judge to Grant or Deny Plaintiff in FORMA PAUPERIS STATUS, ordering Plaintiff to pay \$350.00 is void. Plaintiff contends he never gave his consent to the Magistrate Judge to determine such matter.

Wherefore, Plaintiff Request This Court To Clarify the Enforcement Of The August 2 2006 Order in Simple And Plain Terms So The Enforcement Of Said Order Will Comply With The Intent Of Congress, Federal Laws And This Court.

Discussion Concerning
Reimbursement

Plaintiff, Contends The Magistrate Judge Susan Russ Walker, Did Not Have Authority To Grant Or Deny His Request To Proceed In Forma Pauperis Status, Therefore He Should Be Reimbursed Of \$ 350.00 Dollars Paid On August 9 2006.
I declare (or certify, verify, or state) under penalty of perjury.

Done This 26th day of April 2007.

Tony Fountain, pro se

CERTIFICATE OF SERVICE

I, Certify, That I Have Served A True And Correct Copy Of The foregoing Upon The Following As Addressed: OFFICE OF THE ATTORNEY GENERAL, 1100 S. UNION ST. MONROVIA, AL 36130, PORTFIELD, HARPER, MILLS & MOTLOW PC. 22 INVERNESS CENTER PARKWAY SUITE 600, P.O. BOX 530790, BIRMINGHAM, AL 35253-0790, By Placing The Same In The U.S. Mail Pre Paid On This 26th day of April 2007.

Sincerely

TO



Tony Fountain #152157
Stevens Correctional Facility
P.O. Box 56, B1-930
Elmore, Al. 36025

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OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
P.O. Box 711
Montgomery, Al. 36101-0711

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